

EXHIBIT 100-100
100-100

NOT IN

95TH CONGRESS
1ST SESSION

S. 2117

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 1977

Mr. EASTLAND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1346 (b) of title 28, United States Code, is
4 amended by striking the period at the end of the section
5 and adding the following: “, or where the claim sounding
6 in tort for money damages arises under the Constitution of
7 the United States when such employee of the Government
8 is acting within the scope of his office or employment, or un-

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1 der the color thereof, such liability to be determined in
2 accordance with applicable Federal law.”.

3 SEC. 2. Section 2672 of title 28, United States Code,
4 is amended by inserting in the first paragraph the following
5 language after the word “occurred” and before the colon:
6 “, or where the claim sounding in tort for money damages
7 arises under the Constitution of the United States when such
8 employee of the Government is acting within the scope of
9 his office or employment, or under the color thereof, such
10 liability to be determined in accordance with applicable
11 Federal law”.

12 SEC. 3. Section 2674 of title 28, United States Code, is
13 amended by (a) inserting in the first paragraph the follow-
14 ing language after the word “claims” and before the comma:
15 “based upon negligent or wrongful acts or omissions”; and
16 (b) by adding as a third paragraph the following:

17 “The United States shall be liable, respecting the provi-
18 sions of this title relating to tort claims arising under the
19 Constitution of the United States, to the same extent as
20 entitlement to compensation is recognized under the tort law
21 of the place where the violation occurred, but shall not be
22 liable for interest prior to judgment or for punitive damages:
23 *Provided, however,* That for a claim arising under the Con-
24 stitution of the United States, such compensation shall not
25 be less than liquidated damages of \$1,000, except that for

1 a claim arising from the interception or disclosure of a wire
2 or oral communication in violation of chapter 119 of title
3 18, such compensation shall not be less than liquidated
4 damages computed at the rate of \$100 a day for each day
5 of violation or \$1,000 whichever is higher, plus a reason-
6 able attorney's fee and other litigation costs reasonably
7 incurred: *And provided further*, That without any effect or
8 limitation upon any other defenses, a good faith reliance on
9 a court order or legislative authorization shall constitute a
10 complete defense to any claim or suit arising under the
11 Constitution of the United States, but, notwithstanding the
12 existence of such defense, the United States shall, when it
13 has determined that the officer or employee was acting
14 within the scope of his office or employment or under color
15 thereof, reimburse the person whose constitutional rights
16 were violated for the actual or compensatory damages
17 sustained."

18 SEC. 4. Section 2675 (a) of title 28, United States Code,
19 is amended by inserting the following language after "em-
20 ployment," : "or upon a claim for money damages arising
21 from the violation of the Constitution of the United States
22 by any employee of the Government while acting within
23 the scope of his office or employment or under the color
24 thereof,".

1 SEC. 5. Section 2679 (b) of title 28, United States Code,
2 is amended to read as follows:

3 “(b) The remedy against the United States provided
4 by sections 1346 (b) and 2672 of this title for claims for
5 injury or loss of property or personal injury or death re-
6 sulting from the negligent or wrongful act or omission of any
7 employee of the Government while acting within the scope
8 of his office or employment or for claims arising from the
9 violation of the Constitution of the United States by any
10 employee of the Government while acting within the scope
11 of his office or employment or while acting under the color
12 thereof is exclusive of any other civil action or proceeding
13 arising out of or relating to the same subject matter against
14 the employee whose violation or act or omission gave rise to
15 the claim, or against the estate of such employee.”.

16 SEC. 6. Section 2679 (d) of title 28, United States
17 Code, is amended to read as follows:

18 “(d) (1) Upon certification by the Attorney General
19 that the defendant employee was acting within the scope of
20 his office or employment, or in claims arising under the
21 Constitution of the United States that the employee was
22 acting within the scope of his office or employment or under
23 the color thereof, at the time of the incident out of which the
24 suit arose any such civil action or proceeding commenced
25 in a United States district court shall be deemed an action

1 against the United States under the provisions of this title
2 and all references thereto, and the United States shall be
3 substituted as the party defendant. After such substitution
4 the United States shall have available all defenses to which
5 it would have been entitled if the action had originally
6 been commenced against the United States under this chap-
7 ter and section 1346 (b) .

8 “(d) (2) Upon certification by the Attorney General
9 that the defendant employee was acting within the scope
10 of his office or employment, or in claims arising under the
11 Constitution of the United States that the employee was
12 acting within the scope of his office or employment or under
13 the color thereof, at the time of the incident out of which
14 the suit arose any such civil action or proceeding commenced
15 in a State court shall be removed, without bond, at any time
16 before trial, by the Attorney General to the district court
17 of the United States of the district and division embracing
18 the place wherein it is pending and be deemed an action
19 brought against the United States under the provisions of
20 this title and all references thereto, and the United States
21 shall be substituted as the party defendant. After such
22 substitution the United States shall have available all
23 defenses to which it would have been entitled if the action
24 had originally been commenced against the United States
25 under this chapter and section 1346 (b) . The certification

1 of the Attorney General shall conclusively establish scope
2 of office or employment and in claims arising under the
3 Constitution of the United States, acting under color of
4 office or employment for purposes of such initial removal.
5 Should a district court of the United States determine on a
6 hearing on a motion to remand held before trial on the merits
7 that the employee defendant was not acting within the scope
8 of his office or employment, and in claims arising under
9 the Constitution of the United States, acting within the scope
10 of his office or employment or under color thereof, the
11 case shall be remanded to the State court in which it was
12 initially filed.

13 “(d) (3) The provisions of this chapter and section
14 1346 (b) shall not apply in cases where the United States
15 has not waived its sovereign immunity under this chapter.

16 “(d) (4) Where an action or proceeding under this
17 chapter is precluded because of the availability of a remedy
18 through proceedings for compensation or other benefits from
19 the United States as provided by any other law, the action
20 or proceeding shall be dismissed, but in that event the run-
21 ning of any limitation of time for commencing, or filing an
22 application or claim in, such proceeding for compensation or
23 other benefits shall be deemed to have been suspended during
24 the pendency of the civil action or proceeding under this
25 chapter.”.

1 SEC. 7. Section 2679 of title 28, United States Code,
2 is amended by adding a new subsection (f) as follows:

3 “(f) Where an action or proceeding under section 1346
4 (b) or 2672 arising under the Constitution of the United
5 States results in a judgment against the United States or an
6 award, compromise, or settlement paid by the United States,
7 the Attorney General shall forward the matter for such
8 further administrative investigation or disciplinary action as
9 may be appropriate to the head of the department or agency
10 by which the employee whose violation or act or omission
11 gave rise to the claims was employed.”.

12 SEC. 8. Section 2680 (h) of title 28, United States
13 Code, is amended to read as follows:

14 “(h) Any claim arising out of libel, slander, misrepre-
15 sentation, deceit, or interference with contract rights.”.

16 SEC. 9. (a) Subsections (a) through (d) of section
17 4116 of title 38, United States Code, are repealed, and
18 subsection (e) of that section is amended by deletion of the
19 designation “(e)”, by deleting the words “person to whom
20 the immunity provisions of this section apply (as described
21 in subsection (a) of this section),” and inserting in lieu
22 thereof the words “employee of the Department of Medicine
23 and Surgery”.

24 (b) Subsections (a) through (e) of section 224 of the
25 Public Health Service Act, as added by section 4 of the Act

1 of December 31, 1970, and renumbered (42 U.S.C. 233
2 (a) through (e)), are repealed, and subsection (f) is
3 amended by deletion of the designation "(f)".

4 (c) Subsections (a) through (e) of section 1091 of
5 the Foreign Service Act of 1946, as added by section 119
6 of the Act of July 12, 1976 (22 U.S.C. 817 (a) through
7 (e)) are repealed.

8 (d) Subsections (a) through (e) of section 1089, title
9 10, United States Code, are repealed. Subsection (f) is
10 amended by deleting the words "person described in sub-
11 section (a)" and inserting in lieu thereof the words "em-
12 ployee of the Armed Forces, the Department of Defense, or
13 the Central Intelligence Agency,".

14 (e) Subsections (a) through (e) of section 307 of the
15 National Aeronautics and Space Act of 1958, as added by
16 section 3 of the Act of October 8, 1976 (42 U.S.C. 2458a
17 (a) through (e)), are repealed, and subsection (f) is
18 amended by the deletion of the designation "(f)", by the
19 deletion of the words "person described in subsection (a)"
20 and by the insertion in lieu thereof of the words "employee
21 of the National Aeronautics and Space Administration".

22 SEC. 10. Section 2520, title 18, United States Code,
23 shall not apply to civil causes of action against officers or
24 employees of the United States while acting within the scope

1 of their office or employment, or while acting under the color
2 of such office or employment.

3 SEC. 11. This Act shall apply to all claims and suits
4 pending on the date of enactment or filed or accruing there-
5 after.

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